
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2885 of 1995
Date of decision: 14.2.2013

Dharam SinghPetitioner

Vs.

State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: None for the petitioner.

Mr. Aman Bahri, Addl. Advocate General, Punjab
for the respondents

G. S. SANDHAWALIA, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari quashing the charge sheet dated 29.10.1987(Annexure P-1) issued to the petitioner by the Government of Punjab, Department of Vigilance and show cause notice dated 30.1.1990 (Annexure P-2) whereby penalty of dismissal from service was proposed to be imposed upon him.

2. The allegation levelled against the petitioner who was serving as a Junior Engineer was that during the period from 1.1.1981 to 31.3.1982, he had built a house at Rampura Phul on which he spent ₹ 97153/- thereby he incurred expenditure disproportionate to his known sources and the enquiry was held by the Enquiry Officer, Vigilance Department, Punjab. The petitioner had objected to the jurisdiction of the Enquiry Officer-respondent no.2 to hold enquiry on the plea that he was a non-gazetted officer. The charge sheet dated 29.10.1987 was served

relating to a matter for the period from 1.1.1981 to 31.3.1982, which was a stale one.

3. That in the written statement, it has been pleaded that the petitioner had been given full opportunity to give his view point. The enquiry was within jurisdiction as it pertained to indulgence in corruption by the petitioner by acquiring disproportionate assets to his known sources of income and, therefore, issuance of show cause notice dated 30.1.1990 was within the jurisdiction of respondent no.1. The enquiry was started against the petitioner on the basis of a complaint and a check period was fixed from 1.1.1981 to 31.3.1983 to calculate the income and expenditure and it took long time in the collection of documents from various quarters. The enquiry was completed in the year 1987 and it was established that the petitioner was guilty of acquiring disproportionate assets beyond his known source of income. Thus, there was no delay in initiating action against the petitioner.

4. The writ petition was admitted on 12.3.1990 and ordered to be heard along with Civil Writ Petition No.9432 of 1989 and directed that the stay would be in the same terms as in the aforesaid writ petition. The office has put up the file of Civil Writ petition No.9432 of 1989 and from perusal of the same, it goes on to show that further proceedings before the Inquiry Officer were stayed in that case and subsequently passing of final order was stayed. The said writ petition was allowed vide order dated 8.5.2009 and the following observations have been made:-

“It is almost 20 years that the disciplinary proceedings against the petitioner have been stayed. The petitioner must have retired from service. No useful purpose will be served to allow the disciplinary proceedings to be continued after lapse of

such a long period. Otherwise also from the admitted facts on record, it appears that the incident relates back to the year 1981-82, whereas charge sheet was issued after a period of 3 years and even the enquiry was constituted against after a period of 3 years. There has been a serious lapse on the part of the respondents in promptly initiating disciplinary proceedings. It is not deemed appropriate to allow the disciplinary proceedings after the lapse of such a long period.

This petition is accordingly allowed, charge sheet dated 10.5.1985 and enquiry proceedings against the petitioner are hereby quashed."

5. A perusal of the record shows that the petitioner was charge sheeted on 29.10.1987 on the ground that he had incurred excess expenditure of ₹ 90,967/- which was beyond his known sources of income and that he had not taken prior permission of the Government for construction of the house. Eventually, the charge was only established to the extent of spending of ₹ 13,378/- more than known sources of income in the years 1981 to 1983 and it was on the basis of the said report, the show cause notice was issued on 30.1.1990 proposing penalty of dismissal from service, which is now subject matter of the writ petition. The respondents in their reply also admitted that a complaint had been received and the enquiry had been started in April, 1983 against the petitioner but the charge sheet was only issued on 29.10.1987. As per the respondents, there was no delay in initiating action against the petitioner as it took a long time for collection of documents from various quarters. The Hon'ble Apex Court in **State of M.P. Vs. Bani Singh and another 1990 (Sup) SCC 738** had held that if there is no satisfactory explanation for the inordinate delay

in issuing the charge sheet, it would be unfair for the department to proceed with the enquiry. The said view was followed in **State of A.P. Vs. N. Radhakishan** 1998 (4) SCC 154 and it was held as under:-

“It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently

and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

6. Thereafter in **P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board 2005(6) SCC 636**, the Hon'ble Apex Court observed as under:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the

department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs.

Appeal allowed"

7. Keeping in view the above principles laid down and after balancing the facts in the present case and keeping in view the fact the respondents have been unable to explain satisfactorily the delay in charge sheeting the petitioner even through they had received a complaint in 1983 and the said delay would necessarily have prejudiced the case of the petitioner to give a satisfactory explanation. In spite of the delay in initiating the proceedings, it is apparent that the petitioner still successfully was able to establish that he had not incurred excess expenditure of ₹ 90,967/- as alleged and the charge was only established to the extent of ₹ 13,378/-. Had the proceedings been initiated expeditiously, the prejudice would have not been caused to the petitioner.

8. That the disciplinary proceedings were stayed by a Division Bench of this Court on 12.3.1990, which was 22 years ago and the said order has remained in force for the last two decades, this Court is thus of the opinion that it would be appropriate to draw a curtain on the controversy and put an end to agony of the petitioner, who was appointed in the year 1961 and by now he must have retired from service. Accordingly, the present writ petition is allowed. Charge sheet dated 29.10.1987(Annexure P-1) and show cause notice dated 30.1.1990

(Annexure P-2) whereby penalty of dismissal from service was proposed to be imposed upon the petitioner are quashed.

(G.S.SANDHAWALIA)
JUDGE

14.2.2013

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